

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

2008 JAN -3 PM 1:52

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Brian BECERRA-Leon,)

Mag. Case No. 08MJ0012 ^{YML} DEPUTY

AMENDED COMPLAINT FOR
VIOLATION OF

Title 21 U.S.C. Sections 841(a)(1) and 846
CONSPIRACY TO
DISTRIBUTE MARIJUANA

The undersigned complainant being duly sworn states:

Beginning at a date unknown, and continuing up to December 3, 2007, within the Southern District of California, defendant Brian BECERRA-Leon did knowingly and intentionally conspire with others, to distribute marijuana, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.



SIGNATURE OF COMPLAINANT

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 3rd DAY OF
JANUARY, 2008.



MAGISTRATE JUDGE

CATHY ANN BENCIVENGO
U.S. MAGISTRATE JUDGE

PROBABLE CAUSE STATEMENT

I, Darron D. Lee, a Special Agent with the U.S. Drug Enforcement Administration (DEA) for approximately six years, and a member of the ad-hoc San Diego Tunnel Task Force for five years, declare under penalty of perjury, the following is true and correct:

On 12/03/2007, at approximately 4:45 A.M., a drug smuggling tunnel spanning the United States and Mexico was discovered at 461 Tecate Road, Tecate, California (CA) by the U.S. Border Patrol (USBP). In addition to the tunnel, approximately 13,776 pounds of marijuana was also discovered on the property, in the immediately vicinity of the tunnel's exit point. The tunnel measured approximately 1300 feet long, and the Mexican point of origin for the tunnel was a two-story commercial building located at Calle Presidente Elias, #261, Tecate, Baja California Norte (BCN), Mexico. The property lot located at 461 Tecate Road, Tecate, CA was a 25,000 square feet open lot, with the entire perimeter of the property enclosed by a chain link fence. The only entrance onto the property consisted of a rolling gate on the west end of the property. Attached to the fence was a sign listing a Mexican telephone number, "665-654-2120", along with an advertisement for rental of the property. The tunnel and marijuana were located on the eastern portion of the lot. The tunnel exit and the vast majority of the marijuana was located inside a forty-feet shipping container on the southeast corner of the lot. The remaining marijuana was located inside a truck cargo container parked within four feet north of the shipping container.

Soon after the tunnel's discovery, DEA and ICE Agents were able to locate the publicly listed owner of the property lot at 461 Tecate Road, an individual named Flavio AGUIRRE-Hernandez. AGUIRRE-Hernandez acknowledged to ICE S/A Rexford Setzer on 12/03/2007 that he was the owner of the lot in question, and

that the telephone number advertised on the lot's fence belonged to him. AGUIRRE-Hernandez subsequently agreed to meet DEA Agents at the San Ysidro Port of Entry (POE) on 12/04/2007 to answer questions concerning the status of the property lot.

On 12/04/2007, I interviewed AGUIRRE-Hernandez concerning the discovery on his property. AGUIRRE-Hernandez stated that he had rented the eastern 18,000 square feet portion of the property to an individual he identified as Brian BECERRA-Leon. AGUIRRE-Hernandez provided me with a copy of the lease and photocopy of the Mexican driver's license for BECERRA-Leon, issued from Baja California Norte. It was subsequently discovered that BECERRA-Leon was a United States Citizen who also possessed a California driver's license. AGUIRRE-Hernandez stated that BECERRA-Leon initially contacted AGUIRRE-Hernandez about leasing a portion of the lot in May 2006, but did not initiate the lease until July 1, 2006. AGUIRRE-Hernandez stated that throughout the duration of the negotiations for the lease, he dealt only with BECERRA-Leon. AGUIRRE-Hernandez stated that the lease was made for \$2000 a month, and that he was always paid in cash by either BECERRA-Leon or another individual he only knew by the name "Jose". AGUIRRE-Hernandez stated that on the occasions he went to the lot, he observed BECERRA-Leon on the property, acting in a capacity which AGUIRRE-Hernandez described as a security guard.

On 12/04/2007, a companion of AGUIRRE-Hernandez, who regularly visited the lot to conduct business for AGUIRRE-Hernandez, identified a photograph of BECERRA-Leon as an individual who was a regularly present on the lot.

On 12/04/2007, DEA Group Supervisor (G/S) Pedro Pena called a Mexican telephone number, 011-52-661-616-9140, belonging to BECERRA-Leon. An individual acknowledging that he was BECERRA-Leon answered the telephone call and stated that he was currently in Mexico. G/S Pena identified himself as a DEA Agent and asked that BECERRA-Leon meet him at the Otay Mesa POE to answer questions. BECERRA-Leon agreed to meet at the Otay Mesa POE in one hour, but never arrived.

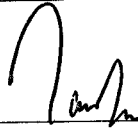
All subsequent attempts to contact BECERRA-Leon on the same telephone number have been unsuccessful.

On 12/07/2007, DEA S/A Melissa Bell interviewed a workman hired by AGUIRRE-Hernandez to repair the chain link fence around the property, which had been damaged in October 2007 during the San Diego County wildfires. The workman stated that he worked on the property throughout November 2007, and the only individual he ever encountered on the property was an individual he knew as "Braulio". The workman identified BECERRA-Leon from a photograph provided by S/A Bell as the same individual he knew as "Braulio". The workman stated that BECERRA-Leon was living inside a RV vehicle located on the property. This RV was also still present on the property when the tunnel was discovered on 12/03/2007. The workman stated that BECERRA-Leon provided his cell phone number, 619-941-9316, to the workman for contact purposes. The USBP on 12/03/2007, discovered a cell phone inside the RV immediately after the tunnel's discovery. On 12/17/2007, DEA took custody of the cell phone from USBP and discovered that the cell phone's number was 619-941-9316.

On 12/07/2007, DEA received real estate documents concerning the property in Mexico where the tunnel began. In those documents, it stated that the 1st floor of the commercial building at Calle Presidente Elias, #261, Tecate, BCN, Mexico, which is where the tunnel entrance was located, had been rented in May 2006 until three days prior to the tunnel's discovery. The real estate documents showed that the same individuals responsible for renting the building exercised an option to purchase the building on 11/30/2007. From my experience in tunnel investigations, it is common for the drug trafficking organizations responsible for constructing and operating drug tunnels to secure properties for both the tunnel's exit and entrance points during the same time frame. This is necessary due to the logistics, planning, and navigation of the tunnel prior to and during construction. As previously stated, BECERRA-Leon initially inquired about leasing the lot in May 2006 and secured the lease on July 1, 2006.

Based upon these facts, I believe that BECERRA-Leon participated in a conspiracy with other co-conspirators in smuggling controlled substances into the United States via the tunnel discovered in Tecate, CA on 12/03/2007.

Executed on 1/03/2008 at 1:45 pm.



Darron D. Lee
Special Agent

On the basis of the facts presented in this probable cause statement consisting of 4 pages, I find probable cause to believe that the defendant named in this probable cause statement committed the offense on December 3, 2007 in violation of **Title 21, United States Code, Section 846.**



United States Magistrate Judge

1/3/08 @ 1:45 pm
Date/Time